IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3047 of 2000
With
CIVIL APPLICATION NO. 10655 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

GANDAJI D THAKOR

Appearance:
1. First Appeal No. 3047 of 2000
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
MR SB BRAHMBHATT for Respondent No. 1-2
MR HARSHIT S TOLIA for Respondent No. 1-2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard Mr. P.V. Nanavati, learned advocate for the appellant and Mr. H.S. Tolia, learned advocate for the respondent. In this appeal, Insurance Company has been challenging the order passed under section 163-A of the M.V. Act in MAC Petition No. 617 of 1997 by M.A.C. Tribunal (Main) at Palanpur, district Banaskantha.

2. At the out set it is stated by Mr. H.S. Tolia for the respondents claimants that the application under section 166 of the Act, pending before the Claims Tribunal will not be pressed and a request will be made to the Tribunal for withdrawal of the same.

In view of this statement, the respondents claimants shall make necessary application before the Claims Tribunal for withdrawal of the petition pending section 166 of the Act, pending before Motor Accident Claims Tribunal concerned, within two weeks from today.

3. As far as the amount under section 163A of the Act is concerned, the Claims Tribunal has awarded Rs.1,52,000/- with 12 % interest from the date of application till deposit of the amount. Since the order being under section 163A of the Act the Tribunal would be entitled to estimate the income at Rs.15,000/- per annum in case of non earning person. Under the circumstances deducting 1/3 rd. amount as personal expenses of the deceased will not have any significance, as the amount which the Tribunal can award in case of non earning person is Rs.15,000/-, and the Tribunal has taken the same as the income of the deceased being non earning member. Therefore we do not find any substance in this contention on behalf of the appellant.

4. As far as the grant of rate of interest is concerned, the Tribunal in the impugned award awarded 12 % interest from the date of application. It hardly be said that the judicial pronouncement by the Apex Court suggests grant of interest at the rate of 9 %, having regard to the facts & circumstances of the case. In the instant case, in our opinion, the impugned award as regards the grant of interest is liable to be modified to the extent that the claimants would be entitled to the interest at the rate of 9 % on the amount awarded from the date of application till realisation of the amount. The excess amount, if any, deposited by the Insurance Company be refunded in view of the interest at the rate of 9 % awarded as above.

5. In view of the above, the appeal is partly allowed to the extent that the impugned award is modified granting interest at the rate of 9 % instead 12 %, from the date of application till the deposit of the amount. Rest of the award is confirmed.

5. Civil Application No. 10655 of 2000 is disposed of in light of the order passed in the main appeal.

R & P of the case be returned to the Claims Tribunal, forthwith.

Dt: 7-5-2003 (N.G. Nandi, J)

(M.S. Shah, J)

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